
A BILL FOR AN ACT

RELATING TO CORRECTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that experts have long
2 documented the detrimental effects of restrictive housing on
3 individuals. Spending time in restrictive housing has been
4 found to increase the risk of premature death, even after
5 release from incarceration. Restrictive housing is a severe
6 form of punishment that is closely associated with long-lasting
7 psychological harm and poor post-release outcomes. The official
8 purposes of restrictive housing are typically divided into
9 punishment and correctional facility management. When used as
10 punishment by facility authorities, sometimes called
11 "disciplinary custody" or "disciplinary segregation",
12 restrictive housing serves as a response to misconduct charges
13 such as fighting or drug use. When used for correctional
14 facility management, often called "administrative custody" or
15 "administrative segregation", restrictive housing serves to
16 separate inmates deemed to pose a threat to staff or other
17 inmates, or as protective custody for inmates who seem or are



1 determined to be unsafe in the general prison population.
2 Although the purposes of restrictive housing vary, correctional
3 facility conditions and restrictions are often similar whether
4 an incarcerated person is in disciplinary or administrative
5 custody.

6 The legislature also finds that an overwhelming body of
7 evidence shows that restrictive housing, which deprives inmates
8 of meaningful human contact, including phone privileges that
9 allow them to speak with loved ones, creates permanent
10 psychological, neurological, and physical damage. The
11 legislature notes that House Concurrent Resolution No. 85, H.D.
12 2, S.D. 1 (2016), requested the establishment of a task force to
13 study effective incarceration policies to improve Hawaii's
14 correctional system. The interim report of the task force,
15 which was dated February 2017, included an observation by the
16 Vera Institute of Justice that the prevalence of incarcerated
17 individuals having mental illness is at odds with the design,
18 operation, and resources of most correctional facilities.
19 Studies show that the detrimental effects of restrictive housing
20 far exceed the immediate psychological consequences identified
21 by previous research, such as anxiety, depression, and



1 hallucinations. Unfortunately, these detrimental effects do not
2 disappear once an inmate is released from restrictive housing.
3 Even after release back into a community setting, a former
4 inmate faces an elevated risk of suicide, drug overdose, heart
5 attack, and stroke.

6 The legislature recognizes that as of 2021, legislation to
7 ban or limit the use of restrictive housing in prison has been
8 introduced in thirty-two states and the United States Congress.
9 Further, twenty-four states have enacted statutes that limit or
10 prohibit restrictive housing while other states have limited its
11 use through administrative code, policy, or court rules. Some
12 of these new laws, such as those enacted by Connecticut and
13 Washington, reflect tentative and piecemeal approaches to
14 change. However, most of the new laws represent significant
15 reforms to existing practices and thus have the potential to
16 facilitate more humane and effective practices in prisons and
17 jails.

18 The legislature further finds that the revised United
19 Nations Standard Minimum Rules for the Treatment of Prisoners,
20 also known as "the Nelson Mandela Rules" to honor the legacy of
21 the late South African president, are based upon an obligation



1 to treat all prisoners with respect for their inherent dignity
2 and value as human beings. The rules prohibit torture and other
3 forms of maltreatment. Notably, the rules also restrict the use
4 of restrictive housing as a measure of last resort, to be used
5 only in exceptional circumstances. Moreover, the rules prohibit
6 the use of restrictive housing for a time period exceeding
7 fifteen consecutive days and characterize this disciplinary
8 sanction as a form of "torture or other cruel, inhuman or
9 degrading treatment or punishment". Indeed, Nelson Mandela said
10 he found restrictive housing to be "the most forbidding aspect
11 of prison life" and stated that "[t]here was no end and no
12 beginning; there's only one's own mind, which can begin to play
13 tricks".

14 Accordingly, the purpose of this Act is to:

- 15 (1) Restrict the use of restrictive housing in state-
16 operated and state-contracted correctional facilities,
17 with certain specified exceptions;
- 18 (2) Require the department of corrections and
19 rehabilitation to develop written policies and
20 procedures regarding restrictive housing by July 1,
21 2026;



- 1 (3) Require the Hawaii correctional system oversight
- 2 commission to review certain housing placements;
- 3 (4) Require the department of corrections and
- 4 rehabilitation, by April 1, 2026, to develop policies
- 5 and procedures to review committed persons placed in
- 6 restrictive housing and develop a plan for committed
- 7 persons currently in restrictive housing; and
- 8 (5) Require a report to the legislature and Hawaii
- 9 correctional system oversight commission.

10 SECTION 2. Chapter 353, Hawaii Revised Statutes, is

11 amended by adding a new section to be appropriately designated

12 and to read as follows:

13 "§353- Restrictive housing; restrictions on use;

14 policies and procedures. (a) Except as otherwise provided in

15 subsection (d), the use of restrictive housing in correctional

16 facilities shall be restricted as follows:

- 17 (1) A committed person shall not be placed in restrictive
- 18 housing unless there is reasonable cause to believe
- 19 that the committed person would create a substantial
- 20 risk of immediate serious harm to the committed
- 21 person's self or another, as evidenced by recent



1 threats or conduct, and that a less restrictive
2 intervention would be insufficient to reduce this
3 risk; provided that the correctional facility shall
4 bear the burden of establishing the foregoing by clear
5 and convincing evidence;

6 (2) A committed person shall not be placed in restrictive
7 housing for non-disciplinary reasons;

8 (3) A committed person shall not be placed in restrictive
9 housing before receiving a personal and comprehensive
10 medical and mental health examination conducted by a
11 clinician;

12 (4) A committed person shall only be held in restrictive
13 housing pursuant to initial procedures and reviews
14 that provide timely, fair, and meaningful
15 opportunities for the committed person to contest the
16 confinement. These procedures and reviews shall
17 include the right to:

18 (A) An initial hearing held within twenty-four hours
19 of placement in restrictive housing, in the
20 absence of exceptional circumstances, unavoidable
21 delays, or reasonable postponements;



- 1 (B) Appear at the hearing;
- 2 (C) Be represented at the hearing;
- 3 (D) An independent hearings officer; and
- 4 (E) Receive a written statement of reasons for the
5 decision made at the hearing;
- 6 (5) The final decision to place a committed person in
7 restrictive housing shall be made by the warden or the
8 warden's designee;
- 9 (6) A committed person shall not be placed or held in
10 restrictive housing if the warden or the warden's
11 designee determines that the committed person no
12 longer meets the criteria for the confinement;
- 13 (7) A clinician shall evaluate on a daily basis each
14 committed person who has been placed in restrictive
15 housing, in a confidential setting outside of the
16 committed person's cell whenever possible, to
17 determine whether the committed person is a member of
18 a vulnerable population. A committed person
19 determined to be a member of a vulnerable population
20 shall be immediately removed from restrictive housing
21 and moved to an appropriate placement elsewhere;



1 (8) A disciplinary sanction of restrictive housing imposed
2 on a committed person who is subsequently removed from
3 restrictive housing pursuant to this subsection shall
4 be deemed completed;

5 (9) During a facility-wide lockdown, a committed person
6 shall not be placed in restrictive housing for more
7 than fifteen consecutive days, or for more than twenty
8 days total during any sixty-day period;

9 (10) Cells or other holding or living space used for
10 restrictive housing shall be properly ventilated, lit,
11 temperature-controlled, clean, and equipped with
12 properly functioning sanitary fixtures;

13 (11) A correctional facility shall maximize the amount of
14 time spent outside of the cell by a committed person
15 held in restrictive housing by providing the committed
16 person with access to recreation, education,
17 clinically appropriate treatment therapies,
18 skill-building activities, and social interaction with
19 staff and other committed persons, as appropriate;

20 (12) A committed person held in restrictive housing shall
21 not be denied access to:



1 (A) Food, water, or any other necessity;

2 (B) Appropriate medical care, including emergency
3 medical care; and

4 (C) Legal counsel;

5 (13) Each committed person held in restrictive housing
6 shall receive a written copy of the committed person's
7 sanction and the criteria for a pathway back into the
8 general population. The department shall ensure that
9 the committed person understands the reason for the
10 sanction and the criteria for the pathway back into
11 the general population. The committed person's case
12 manager shall work with the committed person in
13 restrictive housing to develop a plan of action to
14 reduce the committed person's violations, return the
15 committed person to the general population, and work
16 on the committed person's rehabilitation; and

17 (14) A committed person shall not be released directly from
18 restrictive housing to the community during the final
19 one hundred eighty days of the committed person's term
20 of incarceration, unless necessary for the safety of
21 the committed person, staff, other committed persons,



1 or the public. This paragraph shall not be
2 interpreted to delay a committed person's scheduled
3 release.

4 (b) Except as otherwise provided in subsection (d), a
5 committed person who is a member of a vulnerable population
6 shall not be placed in restrictive housing; provided that a
7 committed person who is a member of a vulnerable population
8 because the committed person is:

9 (1) Twenty-one years of age or younger, has a disability
10 based on mental illness, or has a developmental
11 disability shall:

12 (A) Not be subject to discipline for refusing
13 treatment or medication, or for engaging in
14 self-harm or related conduct or threatening to do
15 so; and

16 (B) Be screened by a correctional facility clinician
17 or the appropriate screening service pursuant to
18 rules and, if found to meet the criteria for
19 civil commitment, shall be placed in a
20 specialized unit designated by the director or
21 deputy director of the department, or civilly



1 committed to the least restrictive appropriate
2 short-term care or psychiatric facility
3 designated by the department of health, but only
4 if the committed person would otherwise have been
5 placed in restrictive housing; or

6 (2) Sixty years of age or older; has a serious medical
7 condition that cannot be effectively treated while the
8 committed person is in restrictive housing; or is
9 pregnant, in the postpartum period, or recently
10 suffered a miscarriage or terminated a pregnancy,
11 shall alternatively be placed in an appropriate
12 medical or other unit designated by the director or
13 deputy director of the department, but only if the
14 committed person would otherwise have been placed in
15 restrictive housing.

16 (c) A committed person shall not be placed in restrictive
17 housing or in any other cell or other holding or living space,
18 in any facility, whether alone or with one or more other
19 committed persons, if there is reasonable cause to believe that
20 there exists a risk of harm, harassment, intimidation,



1 extortion, or other physical or emotional abuse to the committed
2 person or to another committed person in that placement.

3 (d) The use of restrictive housing in correctional
4 facilities shall be permitted only under the following limited
5 circumstances:

6 (1) The warden or the warden's designee determines that a
7 facility-wide lockdown is necessary to ensure the
8 safety of committed persons in the facility, until the
9 warden or the warden's designee determines that the
10 threat to a committed person's safety no longer
11 exists. The warden or the warden's designee shall
12 document the specific reasons that any facility-wide
13 lockdown was necessary for more than twenty-four
14 hours, and the specific reasons why less restrictive
15 interventions were insufficient to accomplish the
16 facility's safety goals. Within six hours of a
17 decision to extend a facility-wide lockdown beyond
18 twenty-four hours, the director or deputy director of
19 the department shall publish the foregoing reasons on
20 the department's website and shall provide meaningful



1 notice to the legislature of the reasons for the
2 lockdown;

3 (2) The warden or the warden's designee determines that a
4 committed person should be placed in emergency
5 confinement; provided that:

6 (A) A committed person shall not be held in emergency
7 confinement for more than twenty-four hours; and

8 (B) A committed person placed in emergency
9 confinement shall receive an initial medical and
10 mental health evaluation within six hours and a
11 personal and comprehensive medical and mental
12 health examination conducted by a clinician
13 within twenty-four hours. Reports of these
14 evaluations shall be immediately provided to the
15 warden or the warden's designee;

16 (3) A physician, based upon the physician's personal
17 examination of a committed person, determines that the
18 committed person should be placed or held in medical
19 isolation; provided that any decision to place or hold
20 a committed person in medical isolation due to a
21 mental health emergency shall be made by a clinician



1 and based upon the clinician's personal examination of
2 the committed person. In any case of medical
3 isolation occurring under this paragraph, a clinical
4 review shall be conducted at least every six hours and
5 as clinically indicated. A committed person in
6 medical isolation due to a mental health emergency
7 pursuant to this paragraph shall be placed in a mental
8 health unit designated by the director or deputy
9 director of the department;

10 (4) The warden or the warden's designee determines that a
11 committed person should be placed in protective
12 custody; provided that:

13 (A) A committed person may be placed in voluntary
14 protective custody only when the committed person
15 has provided voluntary, informed, and written
16 consent and there is reasonable cause to believe
17 that protective custody is necessary to prevent
18 reasonably foreseeable harm. When a committed
19 person makes a voluntary, informed, and written
20 request to be placed in protective custody and
21 the request is denied, the correctional facility

1 shall bear the burden of establishing a basis for
2 denying the request;

3 (B) A committed person may be placed in involuntary
4 protective custody only when the correctional
5 facility is able to establish by clear and
6 convincing evidence that protective custody is
7 necessary to prevent reasonably foreseeable harm
8 and that a less restrictive intervention would be
9 insufficient to prevent the harm;

10 (C) A committed person placed in protective custody
11 shall be provided opportunities for activities,
12 movement, and social interaction, in a manner
13 consistent with ensuring the committed person's
14 safety and the safety of other persons, that are
15 comparable to the opportunities provided to
16 committed persons in the facility's general
17 population;

18 (D) A committed person subject to removal from
19 protective custody shall be provided with a
20 timely, fair, and meaningful opportunity to
21 contest the removal;



- 1 (E) A committed person who is currently or may be
2 placed in voluntary protective custody may opt
3 out of that status by providing voluntary,
4 informed, and written refusal of that status; and
- 5 (F) Before placing a committed person in protective
6 custody, the warden or the warden's designee
7 shall use a less restrictive intervention,
8 including transfer to the general population of
9 another facility or to a special-purpose housing
10 unit for committed persons who face similar
11 threats, unless the committed person poses an
12 extraordinary security risk so great that
13 transferring the committed person would be
14 insufficient to ensure the committed person's
15 safety; and
- 16 (5) The warden or the warden's designee determines that a
17 committed person should be placed in restrictive
18 housing pending investigation of an alleged
19 disciplinary offense; provided that:
- 20 (A) The committed person's placement in restrictive
21 housing is pursuant to approval granted by the



1 warden or the warden's designee in an emergency
2 situation, or is because the committed person's
3 presence in the facility's general population
4 while the investigation is ongoing poses a danger
5 to the committed person, staff, other committed
6 persons, or the public; provided further that the
7 determination of danger shall be based upon a
8 consideration of the seriousness of the committed
9 person's alleged offense, including whether the
10 offense involved violence or escape, or posed a
11 threat to institutional safety by encouraging
12 other persons to engage in misconduct;

13 (B) The committed person's placement in restrictive
14 housing shall not revert to another form of
15 segregation after the initial sanction has been
16 served;

17 (C) A committed person's placement in restrictive
18 housing pending investigation of an alleged
19 disciplinary offense shall be reviewed within
20 twenty-four hours by a supervisory-level employee



1 who was not involved in the initial placement
2 decision; and

3 (D) A committed person who has been placed in
4 restrictive housing pending investigation of an
5 alleged disciplinary offense shall be considered
6 for release to the facility's general population
7 if the committed person demonstrates good
8 behavior while in restrictive housing. If the
9 committed person is found guilty of the
10 disciplinary offense, the committed person's good
11 behavior shall be considered when determining the
12 appropriate penalty for the offense.

13 (e) No later than July 1, 2026, the department shall
14 develop written policies and implement procedures, as necessary
15 and appropriate, to effectuate this section, including:

16 (1) Establishing less restrictive interventions as
17 alternatives to restrictive housing, including
18 separation from other committed persons, transfer to
19 other correctional facilities, and any other sanction
20 not involving restrictive housing that is authorized
21 by the department's policies and procedures; provided



1 that any temporary restrictions on a committed
2 person's privileges or access to resources, including
3 religious services, mail and telephone privileges,
4 visitation by contacts, and outdoor or recreation
5 access, shall be imposed only when necessary to ensure
6 the safety of the committed person or other persons,
7 and shall not restrict the committed person's access
8 to food, water, basic necessities, or legal
9 assistance;

10 (2) Requiring periodic training of disciplinary staff and
11 all other staff who interact with committed persons
12 held in restrictive housing; provided that the
13 training:

14 (A) Is developed and conducted with assistance from
15 appropriately trained and qualified
16 professionals;

17 (B) Clearly communicates the applicable standards for
18 restrictive housing, including the standards set
19 forth in this section; and

20 (C) Provides information on the identification of
21 developmental disabilities; symptoms of mental



- 1 illness, including trauma disorders; and methods
2 for responding safely to persons in distress;
- 3 (3) Requiring documentation of all decisions, procedures,
4 and reviews of committed persons placed in restrictive
5 housing;
- 6 (4) Requiring monitoring of compliance with all rules
7 governing cells, units, and other spaces used for
8 restrictive housing;
- 9 (5) Requiring the posting of quarterly reports on the
10 department's official website that:
- 11 (A) Describe the nature and extent of each
12 correctional facility's use of restrictive
13 housing and include data on the age, sex, gender
14 identity, ethnicity, incidence of mental illness,
15 and type of confinement status for committed
16 persons placed in restrictive housing;
- 17 (B) Include the population of committed persons as of
18 the last day of each quarter and a
19 non-duplicative, cumulative count of the number
20 of committed persons placed in restrictive
21 housing during the fiscal year;



1 (C) Include the incidence of emergency confinement,
2 self-harm, suicide, and assault in any
3 restrictive housing unit, as well as explanations
4 for each instance of facility-wide lockdown; and

5 (D) Exclude personally identifiable information
6 regarding any committed person; and

7 (6) Updating the department's corrections administration
8 policy and procedures manual, as necessary and
9 appropriate, to comply with this section, including
10 the requirement to use appropriate alternatives to
11 restrictive housing for committed persons who are
12 members of a vulnerable population.

13 (f) Following the initial hearing for the placement of an
14 individual into restrictive housing, the department shall
15 immediately notify and transmit all relevant documentation and
16 evidence to the Hawaii correctional system oversight commission.

17 The Hawaii correctional system oversight commission shall
18 thoroughly review all determinations regarding the imposition of
19 restrictive housing for fairness, impartiality, alignment with
20 best practices, and other factors the Hawaii correctional system



1 oversight commission finds relevant, and shall issue quarterly
2 reports on the utilization thereof.

3 The Hawaii correctional system oversight commission shall
4 actively monitor and review all housing placements involving
5 individuals subjected to twenty or more hours of cell
6 confinement, irrespective of whether the placements are
7 designated as restrictive housing by the department or
8 state-contracted facilities, to ensure that the department and
9 its contracted entities do not implement cell confinement
10 exceeding twenty or more hours without proper adherence to the
11 procedures set forth in this section.

12 (g) As used in this section:

13 "Correctional facility" means a state prison, other penal
14 institution, or an institution or a facility designated by the
15 department as a place of confinement under this chapter.

16 "Correctional facility" includes community correctional centers,
17 high-security correctional facilities, temporary correctional
18 facilities, in-state correctional facilities, state-contracted
19 correctional facilities operated by private entities, and jails
20 maintained by county police departments.



1 "Member of a vulnerable population" means any committed
2 person who:

- 3 (1) Is twenty-one years of age or younger;
- 4 (2) Is sixty years of age or older;
- 5 (3) Has a physical or mental disability, a history of
6 psychiatric hospitalization, or recently exhibited
7 conduct, including serious self-mutilation, that
8 indicates the need for further observation or
9 evaluation to determine the presence of mental
10 illness;
- 11 (4) Has a developmental disability, as defined in section
12 333F-1;
- 13 (5) Has a serious medical condition that cannot be
14 effectively treated while the committed person is in
15 restrictive housing;
- 16 (6) Is pregnant, is in the postpartum period, or recently
17 suffered a miscarriage or terminated a pregnancy;
- 18 (7) Has a significant auditory or visual impairment; or
- 19 (8) Is perceived to be lesbian, gay, bisexual,
20 transgender, or intersex.



1 "Restrictive housing" is defined as occurring when all of
2 the following conditions are present:

- 3 (1) A committed person is confined in a correctional
4 facility pursuant to disciplinary, administrative,
5 protective, investigative, medical, or other purposes;
6 (2) The confinement occurs in a cell or similarly
7 physically restrictive holding or living space,
8 whether alone or with one or more other committed
9 persons, for twenty hours or more per day; and
10 (3) The committed person's activities, movements, and
11 social interactions are severely restricted."

12 SECTION 3. No later than April 1, 2026, the department of
13 corrections and rehabilitation shall:

- 14 (1) Develop written policies and implement procedures, as
15 necessary and appropriate, for the review of committed
16 persons placed in restrictive housing;
17 (2) Initiate a review of each committed person placed in
18 restrictive housing during the immediately preceding
19 fiscal year to determine whether the placement would
20 be appropriate in light of the requirements of
21 section 353- , Hawaii Revised Statutes; and



1 (3) Develop a plan for providing step-down and
2 transitional units, programs, and staffing patterns to
3 accommodate committed persons currently placed in
4 restrictive housing, committed persons who may
5 prospectively be placed in restrictive housing, and
6 committed persons who receive an intermediate sanction
7 in lieu of being placed in restrictive housing;
8 provided that staffing patterns for correctional and
9 program staff shall be set at levels necessary to
10 ensure the safety of staff and committed persons
11 pursuant to the requirements of this Act.

12 SECTION 4. No later than forty days prior to the convening
13 of the regular session of 2027, the department of corrections
14 and rehabilitation shall submit to the legislature and Hawaii
15 correctional system oversight commission a status report of the
16 department's progress toward full compliance with this Act,
17 along with draft copies of written policies and procedures
18 undertaken pursuant to this Act.

19 SECTION 5. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on July 1, 3000.



Report Title:

DCR; Hawaii Correctional System Oversight Commission;
Correctional Facilities; Committed Persons; Restrictive Housing;
Restrictions; Report

Description:

Restricts the use of restrictive housing in state-operated and state-contracted correctional facilities, with certain specified exceptions. Requires the Department of Corrections and Rehabilitation to develop written policies and procedures regarding restrictive housing by 7/1/2026. Requires the Hawaii Correctional System Oversight Commission to review certain housing placements. Requires the Department by 4/1/2026 to develop policies and procedures to review committed persons placed in restrictive housing and develop a plan for committed persons currently in restrictive housing. Requires a report to the Legislature and Hawaii Correctional System Oversight Commission. Effective 7/1/3000. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

